

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No.1510 of 2010

GANGARAM

.... **Appellant(s)**

Versus

THE STATE OF MADHYA PRADESH

.... **Respondent
(s)**

J U D G M E N T

L. NAGESWARA RAO, J.

1. This Appeal is filed against the judgment of the High Court by which the conviction of the Appellant under Section 8 read with Section 15 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the '*NDPS Act*') and the sentence of 10 years with fine of Rs.1 lakh was affirmed by the High Court.

2. On 14.07.2000, Head Constable Shivshankar working at Police Station Singoli, District Neemuch went to village Palasiya on duty. While coming back from village Palasiya after conducting an inquiry in a complaint

filed under Section 174 Cr. P.C., he found Truck No.MP-14-/1765 parked on a road outside the village Zhantla. On checking the lorry, he found 10 bags of poppy straw, a narcotic drug under the NDPS Act, in the truck. On inquiry, the Appellant who was the driver of the truck produced permit No.198 dated 13.07.2000 issued by the District Excise Officer, Neemuch for transportation of poppy straw from the cultivators of villages Patial, Fusariya, and Dhogaon from 9:00 a.m. till 8:00 p.m. on 14.07.2000. The licence also contained names of the cultivators from the above villages. The Appellant disclosed to the Head Constable that he loaded the poppy straw from village Palasiya with the assistance of Ashish, son of Om Prakash Paliwal, resident of village Badvasa who was an agent to the contractor Bishan Singh. As Shivshankar, Head Constable did not have the power to seize poppy straw under the provisions of the NDPS Act, he took the truck driver *i.e.* the Appellant along with the truck to the police station. The FIR was registered in the police station Singoli, District Neemuch on 15.07.2000. The narcotic drug was unloaded from the truck and was found to be 415 kilograms in weight. Each bag was

marked as Article 1 to Article 10 and two samples of 250 grams from each bag were taken and sealed. The samples of poppy straw were sent to the Forensic Science Laboratory for chemical examination in which it was found that the seized materials are pieces of poppy straw.

3. On completion of investigation, a charge sheet was filed. The accused denied committing any offence. Though he made a prayer for summoning 10 witnesses in his defence, he did not adduce any evidence by summoning any witnesses. The defence of the Appellant was that he was legally transporting the goods of the licensee contractor Bishan Singh who had a valid licence issued by the District Excise Officer. A charge was framed against the Appellant under Section 8 read with Section 15 and Section 8 read with Section 26 of the NDPS Act. The Trial Court framed the following issues for consideration under Section 8 read with Section 15 of the Act which are:

- a). *Whether, the seized material is the psychotropic substance poppy straw i.e. is the Dodachura?*
- b). *Whether, the accused in violation of the provisions of the NDPS Act, or the rules made thereunder, has kept in his possession 415 kilograms of poppy straws, or transported or purchased or sold.*

c). *Whether, the accused has committed any offence.*

4. The Trial Court also framed issues under Section 8 read with Section 26 of the Act which are as follows:

a). *Whether, the holder of the licence, permit or authorization granted under this Act or any rule or order made thereunder or any person in his employ and action on his behalf has failed to produce without any reasonable cause such licence, permit or authorization on demand;*

OR

b). *Omitted without any reasonable cause to maintain accounts or to submit any return in accordance with the provisions of this Act or any rule made thereunder?*

OR

c). *kept any accounts or makes any statement, which is false or which he knows or has reason to believe to be incorrect;*

OR

d). *Willfully and knowingly did any act in breach of any of the conditions of licence, permit or authorization for which a penalty is not prescribed elsewhere in this Act.*

OR

e). *Whether, the accused has committed any offence.*

5. The Trial Court referred to the case of the defence which was that the transportation of poppy straw was on the strength of a licence issued by the competent authority and that the accused was falsely implicated in the case. It was the further case of the defence that

due to rain, the truck could not go inside the villages from which the poppy straw had to be collected. At the most, even if there was violation, it was a breach of the conditions of the permit for which a sentence under Section 26 of the NDPS Act is attracted but not Section 15. According to the defence counsel, the charge under Section 8 read with Section 15 of the NDPS Act was not made out. The Trial Court found that there is no dispute that the goods seized was poppy straw i.e. Dodachura weighing 415 kilograms. According to the Trial Court, not much importance need be given to the fact that the samples of the seized poppy straw were not produced in the Court in view of the admission made by the Appellant regarding the search and the seizure. The main point that was argued on behalf of the Appellant before the Trial Court was that the breach of conditions of the licence would result only in conviction under Section 8 read with Section 26 of the NDPS Act and not Section 15 of the NDPS Act. The prosecution was unable to prove the offence under Section 8 read with Section 15 of the NDPS Act. The

Trial Court, on a consideration of the evidence on record and interpretation of Sections 8, 15, and 26 of the NDPS Act, concluded that the Appellant was guilty of the offence under Section 8 read with Section 15 (c) of the NDPS Act. The Trial Court convicted the Appellant under Section 8 read with Section 15 (c) of the NDPS Act and sentenced him to undergo an imprisonment of 10 years and to pay a fine of Rs.1 lakh. The truck which was seized was held liable for confiscation in accordance with the provisions of Section 60(3) of the NDPS Act. The Trial Court directed confiscation of the vehicle and sale of the same by public auction after the period of appeal expired.

6. The High Court affirmed the conviction and sentence of the Appellant finding no fault was committed by the Trial Court.

7. Mr. Puneet Jain, learned counsel appearing for the Appellant, submitted that the Prosecution failed to discharge the burden of proving the offence. He criticized the judgment of the High Court by which the burden was shifted to the Appellant to prove that he is

innocent. He submitted that the transportation of the poppy straw was from the villages which were mentioned in the licence but the loading took place from the road where the lorry was parked. Due to rain, the truck could not be taken to the villages from which the poppy straw had to be collected. He stated that the prosecution did not adduce any evidence to show that the contraband was purchased and loaded from a village which was not mentioned in the licence. He further argued that at the most only an offence under Section 8 read with Section 26 of the NDPS Act has been made out as, according to the prosecution, the case is one of the violation of the conditions of the licence. He submitted that the Appellant has undergone a sentence of 8 years and he is on bail which was granted by this Court on 05.07.2010 and a lenient view may be taken by this Court.

8. Mr. Ravi Prakash Mehrotra, learned counsel appearing for the Respondent-State, has submitted that the seizure of poppy straw was admitted by the Appellant and there was no need for the prosecution to

further prove the seizure. As the defence of the Appellant was that the transportation is on the basis of a valid licence, it was for the Appellant to prove that the purchase of the poppy straw was from the persons whose names are found in the licence. He took us through Sections 8, 15, and 26 of the NDPS Act to argue that Sections 15 and 26 operate in different fields. He contended that the Courts below are right in convicting the Appellant under Section 8 read with Section 15 of the NDPS Act and there is no cause for interference with the judgment of the Trial Court and the High Court.

9. Section 8 of the NDPS Act prohibits cultivation of opium poppy and also prohibits, inter alia, production, manufacture, possession, sale, purchase, and transport of any narcotic drug or psychotropic substance. Sections 15 and 26 of the NDPS Act which are relevant for adjudication of this case are as under:

“15. Punishment for contravention in relation to poppy straw. -Whoever, in contravention of any provisions of this Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse

poppy straw or removes or does any act in respect of warehoused poppy straw shall be punishable,

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

“26. Punishment for certain acts by licensee or his servants. - *If the holder of any licence, permit or authorisation granted under this Act or any rule or order made thereunder or any person in his employ and acting on his behalf*

(a) omits, without any reasonable cause, to maintain accounts or to submit any return in accordance with the provisions of this Act, or any rule made thereunder;

(b) fails to produce without any reasonable cause such licence, permit or authorisation on demand of any officer authorised by the Central Government or State Government in this behalf;

(c) keeps any accounts or makes any statement which is false or which he knows or has reasons to believe to be incorrect; or

(d) willfully and knowingly does any act in breach of any of the conditions of licence, permit or authorization for which a penalty is not prescribed elsewhere in this Act, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both."

10. Section 26 deals with a wilful breach of a condition of the licence for which a penalty is not prescribed elsewhere in the NDPS Act and prescribes punishment with imprisonment for a term that may extend to three years or with fine or with both. Section 15 of the NDPS Act provides that contravention of a licence for transportation of poppy straw involving commercial quantity shall be punishable with rigorous imprisonment for a term which shall not be less than 10 years but may extend to 20 years and a fine which shall not be less than one lakh rupees which may extend to two lakh rupees.

11. We are not impressed with the submission of the learned counsel for the Appellant that there was a failure on the part of the prosecution to prove the

offence alleged against the Appellant. It is clear from the record that the Appellant admitted the seizure of 10 bags of poppy straw from a truck which was stationed at village Palasiya. The only defence before the Courts below was that the transportation was legal as it was being done on the strength of a valid licence issued by a competent authority. The truck was standing on a road near village Palasiya which is 18 kilometers away from one of the villages which is mentioned in the license and from where the Appellant could have loaded and transported the poppy straw according to the licence. The conclusion of the Trial Court regarding the guilt of the Appellant under Section 8 read with Section 15 of the NDPS Act does not call for any interference. The defence of the Appellant is that the truck was standing near the village Palasiya as it could not enter the villages from where the goods were purchased due to rain. No effort was made by the Appellant to prove that there was any rain on that day. Though the Appellant initially informed the Court that he wanted to

examine 10 defence witnesses, he did not summon any of them to depose in the Court.

12. The other point to be considered is whether the Appellant has been rightly convicted under Section 8 read with Section 15 of the NDPS Act. Learned counsel for the Appellant submitted that violation of the conditions of a licence can be punished only under Section 26 (d) of the NDPS Act which carries a maximum sentence of three years. Punishment under Section 26 (d) is for breach of a condition of a licence for which a penalty is not prescribed elsewhere in the Act. Section 15 of the Act deals with punishment for contravention in relation to, amongst other things, transportation of poppy straw. In case the contravention involves commercial quantity, a person shall be sentenced to rigorous imprisonment for not less than 10 years according to Section 15. As the contravention of license in relation to poppy straw has been dealt with in Section 15, Section 26 of the Act is not attracted and the Courts below are right in holding that the Appellant is liable to conviction under Section 8 read with Section 15 of the NDPS Act. As

the facts of this case are different from Criminal Appeal No. 318 of 2005, we are unable to accept the submission of Mr. Jain that the said judgment has to be given due weightage while considering the correctness of the impugned judgment.

13. Though we have taken note of the fact that the Appellant has undergone 8 years imprisonment out of the sentence of 10 years imposed on him and that he has been on bail since the year 2010, we cannot reduce the sentence to the period already undergone by the Appellant in view of the mandatory minimum sentence provided for an offence under Section 15 (c) of the NDPS Act being 10 years.

14. Accordingly, the appeal is dismissed. The Appellant is directed to surrender within a period of four weeks to undergo the remaining portion of the sentence.

.....J
[L. NAGESWARA RAO]

.....J
[M.R. SHAH]

New Delhi,
May 01, 2019.